

1 HONORABLE RONALD B. LEIGHTON
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 CHARLES S LONGSHORE,

11 Plaintiff,

12 v.

13 SCOTT RUSSELL, et al.,

Defendants.

CASE NO. C11-5278 RBL

ORDER

[DKT. #s 65 & 66]

14 THIS MATTER is before the Court on Plaintiff's Motions for Appointment of Counsel

15 [Dkt. #65] and for a scheduling conference [Dkt. #66]. Defendants oppose both Motions.

16 There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983. *Storseth*
17 *v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). A district court has discretion to designate counsel
18 to represent an indigent civil litigant. 28 U.S.C. § 1915(e); *Wilborn v. Escalderon*, 789 F.2d 1328,
19 1331 (9th Cir. 1986). Counsel may only be appointed under 28 U.S.C. § 1915(e)(1) (formerly 28
U.S.C. § 1915(d)) in "exceptional circumstances." *Wilborn*, 789 F.2d at 1331, quoting *Weller v.*
21 *Dickson*, 314 F.2d 598, 600 (9th Cir.), cert. denied, 375 U.S. 845, 84 S. Ct. 97 (1963); *Rand v.*
22 *Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), overruled on other grounds, 154 F.3d 952 (9th Cir.
23 1998); see also *United States v. Madden*, 352 F.2d 792, 794 (9th Cir. 1965). "A finding of
24 exceptional circumstances requires an evaluation of both the likelihood of success on the merits [and]

1 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues
2 involved.”” *Wilborn*, 789 F.2d at 1331, quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir.
3 1983). Neither of the above-cited “factors is dispositive, and both must be viewed together before
4 reaching a decision.” *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991) (quoting *Wilborn*, 789
5 F.2d at 1331).

6 Plaintiff Longshore has not met his burden of demonstrating the exceptional circumstances
7 required for appointment of counsel, and his Motion is DENIED.

8 The basis and purpose for Plaintiff’s Motion for a scheduling conference is not clear.
9 Defendants inform the Court that they have discussed scheduling and discovery, and there is a
10 Joint Status Report due from the parties in the relatively near future. They also oppose any
11 request for early discovery, if and to the extent Plaintiff makes such a request. There has been no
12 showing of a need for an additional conference, or for early discovery, at this time. The
13 Plaintiff’s Motion for a Scheduling Conference is DENIED without prejudice.

14 IT IS SO ORDERED.

15 Dated this 13th day of September, 2012.

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Ronald B. Leighton

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18 Ronald B. Leighton
United States District Judge
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